IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

CRP.No. 1128 of 2004(G)

AS.190/1997 of I ADDL. DISTRICT COURT, TRIVANDRUM
OS.60/1996 of SUB COURT, NEDUMANGAD
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REVN. PETITIONER: APPELLANTS/DEFENDANTS
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1. CHANDRASEKHARA PILLAI,
MADATHUVILAKATHU VEEDU, ANAKUDI MURI,
VAMANAPURAM VILLAGE.

2. SIVADASAN NAIR, CHARUVILA PUTHEN VEEDU,
KUNNATHODU OF DO. DO.

BY ADV. SRI.M.RAMASWAMY PILLAI
SRI.A.CHANDRASEKHARAN NAIR
SRI.P.M.JOSEPH

RESPONDENTS: RESP./PLAINTIFF/ADDL.APPELLANTS/
DEF.LEGAL HEIRS.
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1. G.RATNAKARAN, LATHIKA MANDIRAM,
KUNNATHODU, POONTHALKONAM, VAMANAPURAM VILLAGE.

2. SYAMALA AMMA, REKHA VILASOM,
THENNIMOODU, KARIMKUTTIKKARA P.O., VAMANAPURAM.

3. REKHA, DO. DO.

4. SINDHU, DO. DO.

R1 BY ADV. SRI.D.SAJEEV

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.2740 OF 2004
IN
C.R.P.NO.1128 OF 2004

DISMISSED

1/11/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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C.R.P. NO. 1128 OF 2004

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Dated this the 1st day of November, 2007.

O R D E R

This revision petition is preferred against the judgment of the I Addl. District Judge, Thiruvananthapuram in A.S.190/97. The said appeal was preferred against the judgment of the Subordinate Judge, Nedumangad in O.S.60/96. The suit is one for compensation for the injury sustained in an attack. On account of the attack the plaintiff sustained a contusion of 10 cm above the left lateral Malleolus, an incised wound above the right eye brow, another incised wound on the ulnar, a punctured wound above the injury to eye brow and the X-ray reveal a fracture. The documents produced would reveal that he was treated in Kallara Government Hospital from 24-2-85 to 22.3.85. The Court below granted a compensation of Rs.17,500/- with 12% interest. Under ordinary circumstances while exercising revisional jurisdiction the Court is not expected to interfere with the finding on facts rendered by the Court below unless there is material irregularity or illegality. In a suit for

compensation, that is, a suit of civil nature the damages are classified under two heads namely special damages and general damages. Even in a beneficial legislation like the provisions under the Motor Vehicles Act for granting compensation it is imperative that special damages have to be proved and general damages can be estimated. Here, Rs.500/- is given as expenses for transport, Rs.3,000/- is for food and clothing and Rs.3,000/- for loss of earnings. It has to be understood that the incident had taken place in the year 1985 and what was prevalent on that day has to be taken into consideration while awarding compensation for the victim. In those days one cannot by any stretch of imagination put the wages of the labourer at Rs.3,000/- per mensum. Further, the documents produced does not reveal that he was treated as an inpatient in the hospital. But he was certainly handicapped from doing any work for the reason that he had sustained fracture. Therefore, the estimate of special damages may have to be reduced taking into consideration of the fact that Rs.3,000/- has been

awarded for bystanders expenses and for food and Rs.3,000/- as damages for loss or earnings for a month. I feel this can be minimized and the compensation can be apportioned as follows.

2. For pain and sufferings Rs.10,000/-, Transport expenses Rs.500/- and for loss of earnings, medical and bystanders expenses etc. at Rs.4,500/- thereby making the total compensation at Rs.15,000/-. The learned counsel for the revision petitioner argued before me that the Court below was wrong in holding that the claim is not barred by limitation. The trial court found that the former Article governing the case was Section 22 of the old Act which has been repealed and therefore it is the residuary Article 113 which fixes a period of three years that will govern. In the appellate court the contention raised was that it was Article 72 that will apply and not Article 113. The appellate court considered the said question and held that Article 72 dealt with a situation wherein the suit must be for compensation for doing or omitting to do an act in pursuance of any

enactment in force. The Court further held that the present claim is not with respect to doing or omitting to do an act and since there is no specific Article which covers a situation Article 113 will apply and therefore the suit is not barred by limitation. I am in full agreement with the Courts below on the point of decision on limitation and as the suit is filed within the statutory period of limitation, the said contention cannot be accepted.

3. Lastly, the learned counsel wound contend that the liability of compensation has to be apportioned among the defendants. The contention of the defendants wound reveal that they have denied the very act and they did not have any pleadings to the effect that it is liable to be apportioned. Further whether in furtherance of a common object or common intention a person is attacked the liability comes on each and every person individually, jointly and separately and therefore one cannot in such case deny the compensation and fix the liability on each person. So the said argument cannot be accepted. So far as the interest is concerned since the

matter is of 1985 I feel justice can be met if the interest is reduced from 12% to 9%.

4. In the result the CRP is partly allowed and the decree passed by the Court below is modified and the plaintiff is given a decree for realisation of Rs.15,000/- with 9% interest on the said sum from the date of suit till realisation from the defendants with proportionate costs. So far as the Court fee is concerned, the order will stand as noted by the Court below.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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